

Confidential Transcript of the Testimony of
Edward Blum

Date:

February 26, 2021

Case:

Students For Fair Admissions vs UT at Austin

Edward Blum

CONFIDENTIAL

February 26, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Students For Fair)
Admissions, INC,)

Plaintiff,)

VS.) CIVIL ACTION
UNIVERSITY OF TEXAS AT) NO.: 1:20-cv-00763-RP
AUSTIN, ET AL.,)

Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

EDWARD BLUM

FEBRUARY 26, 2021

VOLUME 1

ATTORNEYS' EYES ONLY

ORAL AND VIDEOTAPED DEPOSITION OF EDWARD BLUM,

produced as a witness at the instance of the DEFENDANT,
and duly sworn, was taken in the above-styled and
numbered cause on February 26, 2021, from 7:36 a.m. to
2:23 p.m. via Zoom, before Miah Hoffman, CSR in and for
the State of Texas, reported by oral stenography,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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P R O C E E D I N G S

1 REPORTER: We are on the record. Today's
2 date is February 26th, 2021. The time is 7:36 a.m.

3 This is the oral deposition of Edward Blum and it is
4 being conducted remotely by agreement of the parties or
5 in accordance with current emergency orders.

6 The witness is attending from the law office of Consovoy
7 and McCarthy located at 1600 Wilson, Arlington, Virginia
8 22209.

9 My name is Miah Hoffman. CSR number
10 11773 with Kim Tindall and Associates. I am
11 administering the oath and recording the deposition
12 remotely by oral stenographic means. My business
13 address is 16414 San Pedro Avenue, Suite 900, San
14 Antonio, Texas 78232.

15 The witness has been identified to me
16 through his U.S. passport. Would counsel please state
17 their appearances for the record?

18 MR. POWERS: Matt Powers for the
19 defendants.

20 MR. MCKETTA: Mike McKetta also for the
21 defendants.

22 MR. HINOJOSA: David Hinojosa for the
23 student intervenors.

24 MS. SIMPSON: Carter Simpson for the
25 student intervenors.

1 MR. MCCARTHY: Thomas McCarthy from
2 Consovoy McCarthy for Student For Fair Admissions, Inc.

3 (Witness duly sworn.)

4 EDWARD BLUM,
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. POWERS:

8 MR. POWERS: Mr. McCarthy, is it okay to
9 proceed? Did you want to say anything on the record
10 before we get started?

11 MR. MCCARTHY: Thanks, Mr. Powers. I
12 would. Consistent with, I think, our practice in the
13 other depositions in this case, I'd like to put a few
14 stipulations on the record and I'll -- I'll do so now.
15 Thanks.

16 During this deposition it's possible that the
17 University of Texas, or the intervenors, will ask
18 questions that SFFA believes infringe upon the First
19 Amendment and associational rights of SFFA and its
20 members. SFFA may instruct the witness not to answer a
21 question on these grounds. If a disagreement arises as
22 to whether this instruction is proper, the parties agree
23 to do their best to resolve the disagreement during the
24 deposition or, if necessary, before the Court. SFFA
25 agrees that UT and the intervenors may have the right to

1 leave the deposition open to recall the witness.

2 In addition, the Court has entered a scheduling
3 order limiting the topics of this deposition. The
4 Court's scheduling order states that right now none of
5 the discovery shall be permitted on any issue other than
6 the issues of jurisdiction or claim preclusion. Last,
7 consistent with our practice in this case, SFFA is
8 designating the entire transcript as for counsel,
9 attorneys' eyes only. Thanks very much, Mr. Powers.

10 MR. POWERS: Thanks, Mr. McCarthy.

11 Q. (BY MR. POWERS) Mr. Blum, please state your
12 name.

13 A. Edward Blum.

14 Q. This is not your first deposition, correct?

15 A. Yes.

16 Q. Is it your first deposition over Zoom?

17 A. Yes.

18 Q. So one of the things I want to flag is that
19 during the course of the day, as with any deposition, if
20 I ask a question that's poorly worded or otherwise
21 unclear that you let me know and I'll clarify that.

22 A. Okay.

23 Q. And, in addition, we have the special
24 circumstance, because we're connected remotely, over
25 Zoom, if at any point there's a break in the connection

1 or a dropout in the audio and you don't hear a question
2 in its entirety, would you please let me know that as
3 well?

4 A. I will.

5 Q. Mr. Blum, this is (audio indiscernible) that
6 SFFA has filed against the University of Texas to
7 challenge it's undergraduate admissions program; is that
8 right?

9 A. Would you repeat the question? You did freeze
10 for just a second or so.

11 Q. Sure. Am I right that this lawsuit that we're
12 in now is the third of three lawsuits in which SFFA has
13 sued UT to challenge its undergraduate admissions
14 program?

15 A. Yes.

16 Q. And in the first of the three lawsuits, do you
17 recall that you and Mr. Mcketta, who's in the Zoom call
18 with us, and I sat in a conference room and you gave
19 testimony in that case?

20 A. I do.

21 Q. Did you have a chance to review your prior
22 testimony from that deposition in anticipation of today?

23 A. Yes.

24 Q. Having reviewed that and had the chance to
25 reflect on it, is there anything that either because of

1 of the PDF document. Do you find a list of deposition
2 topics?

3 A. I do.

4 Q. And are you the person designated by SFFA to
5 speak on each of these topics?

6 A. Yes.

7 Q. And have you taken steps to review those
8 document -- those topics and to become prepared to talk
9 about them today?

10 A. Yes.

11 Q. Mr. Blum, we talked about three separate
12 lawsuits that SFFA has filed against the defendants in
13 this case. Do you recall that the first of the three
14 lawsuits was dismissed by the Court?

15 A. Yes.

16 Q. And after that first lawsuit -- that first
17 lawsuit was filed in state court, correct?

18 A. Yes.

19 Q. After that first lawsuit was dismissed, a
20 second lawsuit was filed in state district court,
21 correct?

22 A. Yes.

23 Q. And do you recall how that lawsuit came to an
24 end?

25 A. Yes.

1 Q. And what's your recollection of that?

2 A. We withdrew that lawsuit.

3 Q. And withdrew that lawsuit and then brought the
4 lawsuit in federal court that we're here on today; is
5 that right?

6 A. Yes.

7 Q. What was behind your decision to dismiss the
8 state court lawsuit and to bring this lawsuit in federal
9 court?

10 MR. MCCARTHY: Objection on the grounds
11 of attorney/client privilege. I just want to remind the
12 witness not to disclose any communications with counsel.
13 But you may answer the question without disclosing such
14 information then you may do so.

15 MR. POWERS: Thank you.

16 Q. (BY MR. POWERS) Yes. Setting aside any
17 conversations just your -- your deliberation, your
18 choice and -- and your understanding of the reasons.

19 A. Mr. Powers, I cannot go into the reasons that
20 you have asked without divulging advice of counsel.

21 Q. Let me just ask this: What was your
22 understanding? I don't want to hear anything about any
23 communications you had with counsel, but what was your
24 understanding of the -- the decision to change from a
25 suit in state court to a suit in federal court?

1 the board and counsel.

2 Q. (BY MR. POWERS) Okay. And -- and just to
3 clarify the -- the very specific question I was asking
4 is whether there were any other individuals involved in
5 deliberations about whether to bring this action that
6 did not include members of the board of SFFA or SFFA's
7 counsel?

8 A. I don't believe so.

9 Q. You have described yourself as the architect
10 of various lawsuits, correct?

11 A. Yes.

12 Q. You were the architect of the -- each of the
13 three lawsuits that SFFA has filed against UT, including
14 this one, correct?

15 MR. MCCARTHY: Objection form.

16 THE WITNESS: Architect can have various
17 meanings, Mr. Powers, but I would -- I would
18 characterize my activities as that of laying out general
19 strategy and then turning to counsel to effectuate that
20 strategy. I -- I hope that that's sort of the answer to
21 your question.

22 Q. (BY MR. POWERS) Well, and -- and when you've
23 described yourself as architect before, you include more
24 than just coming up with a strategy and talking to
25 counsel, but there's several things you've -- you've

1 done to facilitate the lawsuit; isn't that right?

2 MR. MCCARTHY: Objection form.

3 THE WITNESS: Yes.

4 Q. (BY MR. POWERS) And that's included
5 coordinating the fundraising and funding of the lawsuit;
6 is that right?

7 A. Yes.

8 Q. That's included actually (audio indiscernible)
9 a person who could serve as a plaintiff or as a standing
10 member for the lawsuit; is that right?

11 A. Mr. Powers, you broke up there for just a
12 second. Could you repeat that question?

13 Q. Thank you. Of course. Your role as architect
14 also has you identifying individual or individuals to
15 serve as either a plaintiff or as a standing member for
16 a lawsuit, correct?

17 A. Yes.

18 Q. And -- and more than just speaking with
19 counsel, you have also taken on the role of identifying
20 the counsel to serve in the role as attorneys for the --
21 the plaintiff in each of the lawsuits that you
22 architected, correct?

23 MR. MCCARTHY: Objection form.

24 THE WITNESS: You -- you broke up just a
25 little bit again, but I think your question was have I

1 identified the lawyers that have been retained to
2 represent SFFA and the answer to that is yes.

3 Q. (BY MR. POWERS) Now -- and then you have also
4 -- you have described yourself as the architect of very
5 many lawsuits; is that right?

6 MR. MCCARTHY: Objection form.

7 THE WITNESS: Well, I -- I think the
8 earliest self-description was not of architect, but of a
9 character in a Broadway play named Yente the matchmaker.
10 Mr. Mcketta pursued that early on in our former or
11 earlier deposition.

12 MR. POWERS: Yes, I remember.

13 THE WITNESS: If there is a mash-up
14 between an architect and Yente the matchmaker. I'm not
15 sure I ever really described myself as an architect of
16 this, but think it's -- it's apropos.

17 Q. (BY MR. POWERS) And when I say very many
18 lawsuits by now is it more than 30 lawsuits that you
19 have played a role as architect or Yente the matchmaker?

20 A. I think it's over 30.

21 Q. And in each of the lawsuits that you've served
22 in this kind of role, has your role included identifying
23 a defendant to be named in the lawsuit and a particular
24 policy to be challenged?

25 MR. MCCARTHY: Objection form.

1 THE WITNESS: Sometimes, but other times,
2 no.

3 Q. (BY MR. POWERS) With respect to the
4 litigation against the University of Texas over its
5 admissions policy, that is a policy and a defendant that
6 you identified, correct?

7 MR. MCCARTHY: Objection form.

8 THE WITNESS: Yes.

9 Q. (BY MR. POWERS) And that's true not only with
10 respect to the Students for Fair Admissions lawsuits,
11 but that was also true with respect to the lawsuit that
12 Abigail Fisher brought against the University of Texas;
13 is that right?

14 MR. MCCARTHY: Objection form.

15 THE WITNESS: Yes.

16 Q. (BY MR. POWERS) You stated, in the past, that
17 you formed SFFA with the ultimate goal to have the
18 supreme court revisit its decision in Fisher versus the
19 University of Texas and end the use of race and
20 ethnicity once and for all; is that correct?

21 MR. MCCARTHY: Objection form.

22 THE WITNESS: No, that's -- that's not
23 correct.

24 Q. (BY MR. POWERS) You don't think you've stated
25 that in the past?

1 A. So I don't believe I stated that. It may have
2 been characterized in the press that way, but that is
3 not the story of the genesis of Students For Fair
4 Admissions.

5 Q. So give me the -- the clarification on that
6 point that you think is warranted?

7 A. Abigail Fisher filed her first lawsuit in
8 2008. In June of 2013 Fisher one was decided. Students
9 For Fair Admissions then became a viable -- a viable
10 idea that was then put into motion to look at and
11 challenge the use of race in higher education.

12 As you know in the Fisher case, Abigail never asked
13 the Court to revisit its earlier juris prudence so
14 Students For Fair Admissions didn't -- wasn't conceived
15 as an entity to have anything to do with the Fisher
16 litigation.

17 Q. Am I right that the litigation that SFFA has
18 brought against the University of Texas was brought with
19 the goal in mind of achieving a different outcome with
20 respect to the permissibility of use of race and
21 ethnicity admissions than what the supreme court's
22 decision and Fisher permitted?

23 MR. MCCARTHY: Objection form.

24 THE WITNESS: So, Mr. Powers, I'm gonna
25 -- I'm gonna ask you break out that question because

1 it's got too many tendrals (phonetic) for me to come up
2 with --

3 Q. (BY MR. POWERS) That's fair.

4 A. -- you know, a good -- good answer. So could
5 you restate the question in little bites and I'll --
6 I'll take them as they come?

7 Q. I'll -- I'll reframe it just a bit.

8 A. Okay.

9 Q. Setting aside the question of why SFFA was
10 formed, there was a time that you made the decision to
11 (audio indiscernible) SFFA, as a plaintiff, in a lawsuit
12 against the University of Texas; is that true?

13 A. True.

14 Q. And do you recall the moment that you knew you
15 would intend to proceed forward against the University
16 of Texas using SFFA?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: Pretty much.

19 Q. (BY MR. POWERS) And why don't you remind me
20 of how that came to pass?

21 MR. MCCARTHY: Objection.
22 Attorney/client privilege. I just want to caution the
23 witness not to disclose the contents of any -- or not to
24 disclose any communications with counsel, but with that
25 instruction you can certainly answer the question.

1 THE WITNESS: So in Fisher II the Court
2 rendered its opinion I believe again in June of 2016.
3 Shortly thereafter SFFA became aware of a different
4 avenue in which to challenge UT's use of race and
5 ethnicity in its admissions policies.

6 Q. (BY MR. POWERS) In fact, wasn't it on the --
7 the, I think you had described at some point, at the
8 courthouse steps that the decision was made to explore
9 bringing renewed litigation against UT through a state
10 court suit by SFFA?

11 MR. MCCARTHY: Objection form.

12 THE WITNESS: If I said courthouse steps
13 I misspoke. I remember distinctly where I was. I was
14 -- when the opinion came down from the supreme court I
15 was in Houston and I was in a hotel room.

16 Q. (BY MR. POWERS) Okay. But it was that day?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: It -- it very well may have
19 been that day. If not that day then over a 24-hour
20 period.

21 Q. (BY MR. POWERS) And the lawsuit that we're
22 here on today, the third of the three lawsuits that SFFA
23 has filed against the defendants, is a continuation of
24 that effort that you conceived as soon as Fisher II was
25 decided; is that true?

1 MR. MCCARTHY: Objection form.

2 THE WITNESS: Yes.

3 Q. (BY MR. POWERS) Now, the Project on Fair
4 Representation, that is a different advocacy
5 organization that you formed?

6 A. Yes.

7 Q. You are the president of SFFA, correct?

8 A. Yes.

9 Q. You are also the president of the Project on
10 Fair Fepresentation, true?

11 A. Yes.

12 Q. Am I right that you are the sole person
13 responsible for day-to-day operations of SFFA other than
14 counsel?

15 MR. MCCARTHY: Objection form.

16 THE WITNESS: I would say yes. However,
17 our treasurer plays a role in -- if not day-to-day then
18 surely monthly activities with our finances.

19 Q. (BY MR. POWERS) Okay. Thanks for that
20 clarification. And am I right that as to the projet on
21 fair representation, you are also the sole person
22 responsible for the day-to-day operations other than
23 counsel and perhaps the treasurer as to finances?

24 A. Yes.

25 MR. MCCARTHY: Objection form.

1 Q. (BY MR. POWERS) Can you describe for me how
2 the missions of the Project on FairRepresentation and
3 SFFA are the same or different?

4 MR. MCCARTHY: Objection form.

5 THE WITNESS: The -- the mission of both
6 is to eliminate racial considerations in our public
7 policies. Students For Fair Admissions has thus far
8 focused on educational -- higher educational admissions
9 policies and I think once or twice had activities in K
10 through 12 arena. The Project on Fair Representation no
11 longer concentrates on anything in the education policy
12 arena and instead focuses on voting issues, contracting
13 issues, employment issues and general legislation that
14 falls outside of what we believe are traditional civil
15 rights principles.

16 Q. (BY MR. POWERS) Did the Project on Fair
17 Representation end its focus on (audio indiscernible)
18 because you now (audio indiscernible) those issues
19 through, SS, sorry SFFA?

20 REPORTER: Mr. Powers, can you repeat
21 that? You went out.

22 MR. POWERS: I will.

23 Q. (BY MR. POWERS) Did the Project on Fair
24 Representation end its focus on educational issues
25 because those issues are now being handled for you

1 through SFFA?

2 MR. MCCARTHY: Objection form.

3 THE WITNESS: I would say that that's

4 correct.

5 Q. (BY MR. POWERS) Am I right that the Project

6 on Fair Representation did handle those issues

7 throughout dependency of the Fisher litigation?

8 MR. MCCARTHY: Objection form.

9 THE WITNESS: Correct.

10 Q. (BY MR. POWERS) And, in fact, the Project on
11 Fair Representation was a vehicle for all of the funding
12 for the Fisher litigation?

13 REPORTER: Can you repeat that?

14 MR. MCCARTHY: Counsel, I lost you there.
15 I'm sorry.

16 MR. POWERS: I'm sorry.

17 Q. (BY MR. POWERS) The Project on Fair
18 Representation had responsibility for coordinating all
19 of the funding for the Fisher litigation?

20 A. Correct.

21 Q. And the Project on Fair Representation in the
22 hand-off of the education focus of its race-conscious
23 policy challenges, it actually provided seed money to
24 Students For Fair Admissions as it got off the ground;
25 is that right?

1 MR. MCCARTHY: Objection form.

2 THE WITNESS: Yes.

3 Q. (BY MR. POWERS) And are the two organizations
4 now separately continuing exchange of funds between the
5 two?

6 MR. MCCARTHY: Counsel, I lost you again
7 there. I'm sorry. You've just been freezing up a
8 little bit in the middle of the long questions.

9 MR. POWERS: I appreciate you letting me
10 know.

11 Q. (BY MR. POWERS) Are the two entities, Project
12 on Fair Representation on the one hand and Students For
13 Fair Admissions on the other, are they entirely
14 separate, financially, or are there funds still
15 exchanged between them?

16 A. Entirely separate.

17 Q. Are they funded by some of the same
18 institutional donors?

19 MR. MCCARTHY: Objection form and
20 objection on First Amendment and associational grounds.
21 I caution the witness not to disclose the identity of
22 any donors or the amount of any donations. To the
23 extent you can follow that guidance, you may answer the
24 question.

25 THE WITNESS: The answer is yes, both --

1 both entities occasionally receive donations from the
2 same entities. I'm sorry, from -- yeah, from various
3 individuals and -- and foundations, et cetera.

4 Q. (BY MR. POWERS) Am I right that the majority
5 of both entities operating budgets is funded by
6 foundations and institutions?

7 MR. MCCARTHY: You broke up there,
8 counsel. Can you repeat that? Sorry.

9 Q. (BY MR. POWERS) Am I right that the majority
10 of both SFFA's and POFR's operating budgets are funded
11 by foundations and institutional donors?

12 MR. MCCARTHY: Objection form and
13 objection, First Amendment and associational privilege
14 grounds. I instruct the client -- I instruct the
15 witness not to answer except to the extent any such
16 information has already been provided to defense.

17 THE WITNESS: So I'm a little unclear if
18 I'm -- my instructions are to answer that question.
19 Tom, could you restate your --

20 MR. MCCARTHY: You know what, I'm going
21 to go ahead and instruct the witness not to answer the
22 question.

23 MR. MCKETTA: Even to a yes or no
24 question, Tom? Yes or no discloses nothing.

25 MR. MCCARTHY: Yes or no discloses the

1 Q. (BY MR. POWERS) Where do you now live and
2 work, Mr. Blum?

3 A. I -- I live seasonally in Maine and I work in
4 my home in Maine and seasonally I live in Florida and
5 work from my home in Florida.

6 Q. And do you -- I think you mentioned last time
7 that you also spent time in Virginia and New York and
8 South Carolina. Do you still spend part of the year in
9 those -- in homes in those states as well?

10 A. No. Our New York apartment we sold, I guess,
11 maybe five years ago and we rented in South Carolina so
12 there's only two -- only two primary residential
13 domiciles. Maine and Florida.

14 REPORTER: Mr. Blum, you went out on your
15 answer.

16 THE WITNESS: Okay. So I have only two
17 primary domiciles today. Maine and Florida. The others
18 were in the -- in the past.

19 Q. (BY MR. POWERS) You were ahead of the rest of
20 the country as far as remote working I guess?

21 A. I have worked from my home since 1999.

22 Q. And so am I right to say that most of the
23 day-to-day operations of SFFA are handled out of your
24 personal residence?

25 MR. MCCARTHY: Objection form.

1 THE WITNESS: Yes.

2 Q. (BY MR. POWERS) That's also true with respect
3 to the Project on Fair Representation?

4 MR. MCCARTHY: Objection form.

5 THE WITNESS: Yes.

6 Q. (BY MR. POWERS) Did you have any role in
7 approving the form of organization that SFFA would
8 become?

9 A. Yes.

10 Q. And you -- you understood that when it was
11 being formed it was to be a Virginia nonprofit
12 corporation that would have no members; is that right?

13 MR. MCCARTHY: Objection.
14 Attorney/client privilege. I just want to caution the
15 witness not to disclose the communications that he's
16 ever had with counsel, but to the extent you can
17 navigate that instruction, you may answer the question.

18 THE WITNESS: Students For Fair
19 Admissions was conceived as a membership organization.
20 It is been to my attention, multiple times, that
21 Virginia nonprofit membership question pertains to a
22 statutory question rather than the actual individual
23 members who join Students For Fair Admissions.

24 Q. (BY MR. POWERS) From the outset of its
25 formation it was your understanding that you and Abigail

1 Fisher and Richard Fisher would have permanent seats on
2 SFFA's board, correct?

3 MR. MCCARTHY: Objection form.

4 THE WITNESS: As I described at the
5 beginning of the deposition the word permanent was
6 misspoken by me during the first deposition. That the
7 Articles of Incorporation and the amended bylaws, which
8 were brought to my attention, provide for the election
9 of the three of us plus now our fourth board member to
10 be elected by our fellow board members.

11 Q. (BY MR. POWERS) Well, and my -- my focus is on
12 not what the documents may say and -- and what you
13 learned through the passage of time, but on your
14 original understanding of the plan for SFFA and do you
15 hear the distinction that I'm drawing?

16 MR. MCCARTHY: Objection form.

17 THE WITNESS: I do hear the distinction
18 (audio indiscernible).

19 Q. (BY MR. POWERS) With that distinction in mind
20 my question is: Your understanding and plan, from the
21 outset, was that you and Richard Fisher and Abigail
22 Fisher would start out and remain in a position of
23 control with respect to SFFA?

24 MR. MCCARTHY: Objection form.

25 THE WITNESS: It was my understanding

1 that they would join me on the board as board members
2 and frankly it never occurred to me that in reviewing
3 the document it did require us to renominate and reelect
4 one another throughout the course of Students For Fair
5 Admissions life.

6 Q. (BY MR. POWERS) And likewise it's -- it's
7 never been a consideration for you that someone other
8 than Edward Blum would be the chief decision maker and
9 in charge of day-to-day operations of SFFA?

10 MR. MCCARTHY: Objection form.

11 THE WITNESS: So that -- that has changed
12 with time and the terrible pandemic that we're in.
13 Conversations have taken place among the board to weigh
14 out plans, God forbid, if I became ill and died or other
15 board members became ill and died as one had become very
16 ill, so there have been discussions.

17 MR. MCCARTHY: I'd like to caution the
18 witness not to disclose the context of communications
19 with board members, between and among the board.

20 Q. (BY MR. POWERS) So prior to the advent of
21 Covid and recent succession planning discussions am I
22 right that the concession for SFFA envisioned your
23 indefinite continuation in the role of president of SFFA
24 and the person chiefly responsible for day-to-day
25 business?

1 counsel. My question is: At the formation of SFFA, as
2 you were working to start the entity what persons, aside
3 from lawyers, were involved in discussions about how
4 SFFA would govern itself?

5 MR. MCCARTHY: I'm gonna maintain the
6 objection and caution the witness not to disclose the
7 identities of any members or board members of SFFA that
8 are not already known to the University of Texas. But
9 with that guidance, you may answer the question.

10 THE WITNESS: So there were a handful of
11 individuals who have no affiliation with SFFA that I had
12 some discussions about the formation of SFFA and I think
13 Mr. McCarthy is allowing me to give you those name since
14 they have no formal affiliation with -- with SFFA; is
15 that right, Tom?

16 MR. MCCARTHY: If you're certain they are
17 not members or donors to SFFA then you may answer the
18 question, but I instruct the witness not to disclose the
19 identities of any members or donors of SFFA consistent
20 with our maintaining the First Amendment associational
21 privileges that belong to SFFA and it's members in this
22 case.

23 THE WITNESS: So there's one person who
24 is now deceased that did not join SFFA and I can
25 disclose her name. Her name is Abigail Thurnstrom.

1 Q. (BY MR. POWERS) Were there other people
2 besides Abigail Thurnstrom and counsel that you had
3 discussions about how SFFA would govern itself?

4 A. Yes.

5 Q. And can you identify those people by category?

6 A. Oh, sure. Scholars, law professors,
7 think-tank fellows -- I -- I -- I think that -- that
8 covers it.

9 Q. Any -- anybody else that you discussed that
10 issue with?

11 A. Well, I can't give you any more names because
12 I'm confident that those individuals are now members of
13 SFFA. The only one that I -- I'm highly confident never
14 joined was Abby -- Abby Thurnstrom.

15 Q. And when you say there -- there were members
16 about how many members do you believe were involved in
17 those discussions?

18 A. You know, maybe seven or eight. It could be a
19 little bit more, but I'm -- I can come up with seven or
20 eight names including -- including Abby.

21 Q. So one of the people you include in this group
22 is Abigail Fisher?

23 A. No, Thurnstrom.

24 Q. Okay.

25 MR. MCCARTHY: I'm sorry. I didn't -- I

1 couldn't hear the witnesses answer on that. What did
2 you say Edward?

3 THE WITNESS: So Mr. Powers wanted to
4 know about how many people --

5 MR. MCCARTHY: I'm sorry, not that. You
6 said -- I just couldn't hear what you said the last
7 name.

8 THE WITNESS: Oh, Thurnstrom.

9 MR. MCCARTHY: Thurnstrom, thank you.

10 THE WITNESS: Thurnstrom.

11 MR. MCCARTHY: Sorry. Sorry for the
12 interruption, counsel.

13 Q. (BY MR. POWERS) You said Abigail Thurnstrom
14 did not become a member, correct?

15 A. That's -- that's correct. I'm highly
16 confident that she did not become a member.

17 Q. Okay. But I think you included her in the
18 seven or eight?

19 A. Yes.

20 Q. Okay. So that's -- it's -- I guess the count
21 is six or seven?

22 A. Somewhere in though there, yeah.

23 Q. And are -- of -- of that six or seven are any
24 of those people members of the board of SFFA?

25 A. No.

1 Q. The -- the group that you're describing are
2 any of those individuals presently seeking admission to
3 a college or university?

4 MR. MCCARTHY: Objection form.

5 THE WITNESS: No.

6 Q. (BY MR. POWERS) Back at the time of those
7 discussions were they seeking admission or -- to a
8 college or university?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: No.

11 Q. (BY MR. POWERS) Are -- are they individuals
12 who have completed their undergraduate studies?

13 MR. MCCARTHY: Objection form.

14 THE WITNESS: Yes.

15 Q. (BY MR. POWERS) And had they completed their
16 undergraduate studies back at SSFA's formation?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: Yes.

19 Q. (BY MR. POWERS) Okay. So setting aside the
20 list that we talked about already this list of six or
21 seven anonymous individuals along with the categories:
22 Think-tanks, scholars, fellows, law professors, Abigail
23 Thurnstrom, is there any other person you can recall
24 having discussions about how SFFA would govern itself?

25 MR. MCCARTHY: Objection form.

1 of the discussions about how SFFA would govern itself
2 consisted of members of think-tanks, law professors, and
3 scholars and fellows; is that right?

4 A. Correct.

5 Q. Okay. And had -- had any of those individuals
6 had the experience of or do you have reason to think
7 that they had the experience of being rejected by an
8 undergraduate admissions program in the past?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: I really have no idea.

11 Q. (BY MR. POWERS) Okay. That -- that was not a
12 topic they communicated to you that they had that
13 experience of -- of having been rejected to an
14 institution that they believe was on the basis of their
15 race?

16 MR. MCCARTHY: Objection form and
17 objection First Amendment associational privilege
18 grounds and I caution the witness not to disclose
19 concepts of communication with members of SFFA. If you
20 can answer the question with that guidance you may do so

21 THE WITNESS: Well, I think I already
22 answered it and that is, I -- I don't know.

23 Q. (BY MR. POWERS) Can you describe who are the
24 current directors of SFFA?

25 A. Yes.

1 Q. Would you please?

2 A. Yes, I'm -- I'm the president, Abby -- Abigail
3 Fisher is the secretary, Richard Fisher is the
4 treasurer, Joe Zhao is the other board member and our
5 member elected board member is Eva Ghao.

6 Q. Have any -- other than Ms. Fisher, who we know
7 about from her litigation against the University of
8 Texas, have any of the other directors or officers
9 communicated to you that they were denied admission to
10 an undergraduate admissions program on the basis of --
11 of race-conscious program?

12 MR. MCCARTHY: Objection form. Objection
13 First Amendment associational privilege grounds.
14 Caution the witness not to disclose contents of
15 communications with board members or members of SFFA.
16 If you can answer the question without making any such
17 disclosure then you may do so.

18 THE WITNESS: Mr. Powers, I can't -- I
19 can't then answer the question based on Mr. McCarthy's
20 objection.

21 Q. (BY MR. POWERS) Well, as the -- as the
22 corporate representative for, SFFA, if you know, whether
23 any of those -- if SFFA knows whether any of its board
24 members were denied admission to a undergraduate program
25 other than Abigail Fisher who we've mentioned, would you

1 Abby Fisher, has -- was ever rejected from -- from a
2 college or university.

3 Q. And if you expanded the group beyond just the
4 officers to the directors who are on the board?

5 A. Oh, I'm -- I'm sorry. I'm -- I'm -- Mr.
6 Powers, I'm sorry. I conflated the two. I'm -- I am --
7 I was speaking -- directed to all five of the board
8 member's officers of -- of SFFA.

9 Q. Now, have their -- you consider yourself to be
10 a member of SFFA; is that right?

11 A. Yes.

12 Q. And view -- the same is true for the other
13 members of the board of SF -- SFFA, each is a member to
14 your understanding?

15 A. Yes.

16 Q. And has -- has each paid the \$10.00 in
17 membership dues?

18 A. I don't know. I'm confident that two have
19 paid. I'm unclear about three.

20 Q. And -- and who -- who are the two that paid?

21 A. Eva Ghao and Joe Zhao.

22 Q. But unclear as to whether you or the Fishers
23 have paid?

24 A. I'm -- I don't -- I don't know -- I don't
25 know. I -- I don't -- I don't know.

1 Q. You --

2 A. No, I -- I can speak for myself. I don't
3 think I -- I paid a membership fee as it is now
4 required. I -- I have not done that. I'm fairly
5 certain that Abby and Richard have not either, but I
6 could not attest to that.

7 Q. And the vast majority of members of SFFA have
8 not paid the dues; is that right?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: Yes.

11 Q. (BY MR. POWERS) And that's because a
12 substantial part of the membership had built up before
13 SFFA had a policy to collect dues; is that right?

14 A. Yes.

15 Q. And then even since it's had the policy. You
16 have from time to time exercised authority to waive the
17 requirement of dues in certain cases; is that right?

18 MR. MCCARTHY: Objection form.

19 THE WITNESS: Yes.

20 Q. (BY MR. POWERS) Have -- other than the
21 directors themselves, have members of SFFA ever attended
22 directr board meetings?

23 MR. MCCARTHY: Objection. First
24 Amendment and associational privilege grounds. I
25 instruct the witness not to answer the question.

1 bit about some documents and so I'll add another file to
2 the dropbox if you'll bear with me for just a moment.
3 And if you could look to see in the -- in the chat
4 there's a deposition, Exhibit 1.

5 (Exhibit No. 1, marked.)

6 THE WITNESS: Let's see.

7 REPORTER: Mr. Blum, can you have your
8 camera show your mouth?

9 THE WITNESS: Is that better?

10 REPORTER: Yeah, that's good.

11 THE WITNESS: Maybe I can put something
12 underneath this so that I can -- how's that? Is that
13 better? I'm going to go to chat and now I am going to
14 open up this document. Okay. I see Articles of
15 Incorporation and I'll do my best to -- to navigate
16 this. Go -- go ahead, Mr. Powers.

17 Q. Thank you. And these are in fact the Articles
18 of Incorporation of SFFA that you have here at
19 Exhibit 1?

20 A. That's correct.

21 Q. Mr. Blum these Articles of Incorporation have
22 never been amended; is that right?

23 A. I believe our bylaws have been amended. I
24 don't -- don't think that our Articles of Incorporation
25 have been amended, but I'm -- I'm gonna reserve the

1 right to go back and revisit that just to make sure my
2 memory is clear.

3 Q. Sitting here right now, your -- you memory --
4 we'll look at the bylaws later as well, but your -- your
5 memory and understanding is that though the bylaws had
6 been amended, the Articles of Incorporation have not
7 been amended?

8 A. I believe that's right.

9 Q. And you'll have a chance to review your
10 testimony later if you find any inaccuracies that need
11 clarification. Mr. Blum the -- it was your
12 understanding that when formed SFFA would be a Virginia
13 Nonstock Corporation, correct?

14 A. Yes.

15 MR. MCCARTHY: Objection form.

16 Q. (BY MR. POWERS) And that as -- according to
17 its Articles of Incorporation, it would have no members?
18 That's -- that's what the articles provide for, correct?

19 MR. MCCARTHY: Objection form.

20 THE WITNESS: So it clearly states the
21 Corporation shall have no members; however, Students For
22 Fair Admissions has always been conceived and then
23 (audio indiscernible) as a membership organization.
24 This sentence, the corporation shall have no members
25 that's -- with the statutory requirements under the

1 Q. It's a short document. You're -- you're
2 welcome to look at it briefly.

3 A. Okay. I've I've scanned it again, Mr. Powers.
4 Could you ask your question again so that I can -- I can
5 be sure that I can address what you asked me?

6 Q. Yes, you -- you would -- would you agree with
7 me that Exhibit 1, the Articles of Incorporation do not
8 provide for the bylaws to either establish members or
9 set requirements for becoming or serving as members?

10 MR. MCCARTHY: Objection form.

11 THE WITNESS: Yes.

12 Q. (BY MR. POWERS) I want to turn to a new
13 document and so I will -- I'm placing into the chat
14 deposition Exhibit 2 and if you let me know when you've
15 been able to open that.

16 (Exhibit No. 2, marked.)

17 MR. MCCARTHY: Mine's opening very
18 slowly. I don't know if anybody else, but mine's going
19 very slow.

20 MR. POWERS: I'll just wait a moment.
21 Are you able to see the document?

22 THE WITNESS: I -- I am. I have it here
23 in front of me.

24 Q. (BY MR. POWERS) Okay. Thank you. So as to
25 Exhibit 2, do you recognize it as the unanimous written

1 consent that was signed to adopt the bylaws of SFFA
2 around the time of its formation?

3 A. Yes.

4 Q. And if you'll look with me at Page 8 of the
5 PDF, do you find the -- the first Page of the bylaws
6 that were adopted for SFFA on August 6, 2014?

7 A. I'm scrolling down to Page 8.

8 MR. MCCARTHY: Counsel, just to make sure
9 we're talking about Bates number 75?

10 MR. POWERS: Yes.

11 MR. MCCARTHY: Okay. Great. Thanks.

12 MR. POWERS: And thank you for that
13 clarification.

14 THE WITNESS: Yeah, okay. I'm -- I'm on
15 there. I'm on that Page.

16 Q. Mr. Blum the -- you see in the bylaws that
17 were adopted back in 2014 in Article III on Membership?

18 A. I do.

19 Q. And there's two separate provisions. One that
20 echoes what we saw in the Articles of Incorporation, no
21 members -- and then there's a description of a
22 different category -- a class of affiliate members. Do
23 you see that?

24 A. I do.

25 Q. And -- and there -- you agree with me that the

1 affiliate members were to have no voting rights and were
2 not to be considered as members within the meaning of
3 the Virginia Nonstock Corporation Act?

4 A. Let me read it just to confirm. Final
5 sentence reads: "The Board of Directors shall have
6 authority to recognize any individual as an affiliate
7 member." Yes.

8 Q. So my -- my question was: You agree with me
9 that the affiliate members they've got no voting rights
10 and were not to be members within the meaning of the
11 Virginia Nonstock Corporation Act?

12 A. I -- I believe I do.

13 Q. And -- and so is -- is this the sense in which
14 you understood there could be members of SFFA -- people
15 who would have no voting power within the organization
16 going back to 2014?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: To my -- yes. To my
19 understanding that -- that although we would have
20 members of the organization -- those who expressed an
21 interest and desire to join did indeed join. That they
22 would not not have any voting rights under these bylaws.

23 Q. (BY MR. POWERS) Now, I want to focus on a
24 slightly different point. Here there's a reference to
25 the fact that the board would be able to set additional

1 standards from time to time on who could become members.
2 At -- at its outset what were the requirements to
3 become a member of SFFA?

4 A. Quite simple. Express your desire to join,
5 affirmatively tell me either in person or email that you
6 -- the individual want to join SFFA.

7 Q. And other than a desire to join the entity as
8 an affiliate member was there any other requirement that
9 you could recall?

10 A. I can't recall any other requirements.

11 Q. And -- and since that time, my understanding
12 is that it's changed. There has been at least one
13 additional requirement; is that right?

14 A. That's correct.

15 Q. And can you tell me what the current
16 requirements are to join SFFA?

17 A. Requirement is to primarily go online to fill
18 out the application form and pay a one-time membership
19 fee.

20 Q. Has there been any other effort to limit or
21 constrain membership of SFFA to a particular category of
22 persons who share a common circumstance?

23 MR. MCCARTHY: Objection form.

24 The witness: Nodding head.

25 MR. POWERS: I think -- I think I saw you

1 shake your head no, but I -- I couldn't and I think even
2 so the words, but I didn't hear it.

3 THE WITNESS: Yeah, I'm sorry. Yeah, no.
4 The answer -- I'm sorry. I'm sorry, Mr. Powers. It's
5 -- we have nothing to constrain anyone from joining the
6 organization.

7 Q. (BY MR. POWERS) And setting aside the effort
8 to constrain, you have any reason to think that SFFA's
9 membership substantially consists of a group of persons
10 who share any common circumstance?

11 MR. MCCARTHY: Objection form.

12 THE WITNESS: I'm not sure I understand
13 the -- the question. Could you -- could you perhaps --
14 by common circumstance -- I'm a little -- I'm a little
15 fuzzy on what you mean by that.

16 Q. (BY MR. POWERS) So -- so by way of example,
17 one common circumstance might be individuals who have
18 sought, but been denied admission to a university. As
19 there -- has there been an effort to determine whether
20 that circumstance is characteristic of SFFA's
21 membership?

22 MR. MCCARTHY: Objection form.

23 THE WITNESS: There has been no no effort
24 to determine the predicate of people joining SFFA.

25 Q. (BY MR. POWERS) And so -- and also no

1 constraint to that either?

2 A. No restraints at all.

3 Q. Now, Mr. Blum I -- I want to look with you
4 next at the Exhibit 3, so I'm gonna try to get this
5 uploaded. I'm gonna put four in at the same time.
6 Three seems to be going slower. If you're able to open
7 four we might start there.

8 (Exhibits No. 3 and 4, marked.)

9 THE WITNESS: I'm on Exhibit 4.

10 MR. POWERS: Okay.

11 THE WITNESS: Let me see if I can --

12 MR. MCCARTHY: If it helps, for me, four
13 is going faster.

14 MR. POWERS: Yeah, let's start with
15 that.

16 THE WITNESS: "Is unanimous consent in
17 lieu of a meeting of the Board of Directors of Student
18 For Fair Admissions Inc. Is that what I'm looking at?
19 Amended bylaws?

20 MR. MCCARTHY: Is that the one you --

21 MR. POWERS: I -- I'm sorry. I didn't
22 heare you. Can you repeat that?

23 THE WITNESS: I -- I'm looking at a
24 document stamped: Confidential, Unanimous Written
25 Consent in lieu of a meeting of the Board of Directors

1 of Students For Fair Admission Inc. Is that --

2 MR. POWERS: Yes.

3 REPORTER: Mr. Blum, I'm getting a lot of
4 feedback when he's starting to talk. Is there way maybe
5 we can stop and try to fix that? It's overcutting. I
6 can barely hear his answers.

7 MR. POWERS: Yeah, let's go off the
8 record.

9 REPORTER: The time is 9:26 a.m. and we
10 are off the record.

11 (Break.)

12 REPORTER: The time is 9:28 a.m. and we
13 are back on the record.

14 Q. (BY MR. POWERS) Mr. Blum do you have Exhibit 4
15 in front of you still?

16 A. I do.

17 Q. And is Exhibit 4 the Unanimous Consent of the
18 Board of Directors where in the -- the board adopted
19 amended bylaws and established a dues policy for general
20 members?

21 A. Yes, this is the document that did that.

22 Q. And that was in 2015?

23 A. June 19th, 2015, correct.

24 Q. And if you'll look with me at the -- Page 8 of
25 the PDF the document has 59 in the lower right-hand

1 corner.

2 MR. MCCARTHY; Thank you, counsel.

3 MR. POWERS: You find that?

4 THE WITNESS: Stand by, yes, I have it
5 here.

6 Q. (BY MR. POWERS) And this -- this part of the
7 document reflects the -- the amended bylaws that were
8 adopted June 19, 2015, correct?

9 A. Yes.

10 Q. The amended bylaws reflect the same point
11 we've seen in other documents that the members referred
12 to in Article III would not be members within the
13 meaning of the Virginia Nonstock Act, correct?

14 A. Let me read this. Yes.

15 Q. It provides they have rights specifically set
16 forth in these bylaws, correct?

17 A. Yes.

18 Q. And the bylaws established no rights other
19 than the right to vote for one member elected director;
20 is that correct?

21 A. Let -- let -- let me read that, Mr. Powers
22 just to confirm that. Yes.

23 Q. Are -- are you aware of any other action by
24 the board of directors to establish some other set of
25 rights or duties for members?

1 MR. MCCARTHY: Objection form.

2 THE WITNESS: Members have certain rights
3 of course. They have the right to elect a board member,
4 they have the right to resign, they have the right to
5 participate in annula discussions or periodic conference
6 calls -- those are the general rights of members.

7 Q. (BY MR. POWERS) The -- the things you just
8 described were those by a a board action or is that just
9 some -- your -- your general understanding?

10 MR. MCCARTHY: Objection form.

11 THE WITNESS: I think it's my general
12 understanding, but I think it's also the nature of a
13 membership organization, but specifically our membership
14 organization.

15 Q. (BY MR. POWERS) Let me ask you some -- a
16 couple more specific things about the -- the nature of
17 this specific organization. First, why did SFFA make
18 the choice to say that even these general members would
19 not be considered as members within the meaning of the
20 Virginia state law?

21 MR. MCCARTHY: Objection form and
22 objection attorney-client privilege. I'm gonna caution
23 the witness not to disclose communications with counsel.
24 To the extent you can answer the question without making
25 such disclosures you may go ahead and answer the

1 who meet the requirements of 3.03 are entitled to vote
2 for a director in the member elected seat?

3 MR. MCCARTHY: Objection form.

4 THE WITNESS: Mr. Powers you -- you
5 referenced just then Section 3.03, if I'm not mistaken.

6 MR. POWERS: I'm sorry. I'll -- I'll
7 rephrase.

8 Q. (BY MR. POWERS) Am I right that only those who
9 meet the requirements of the 3.02 are eligible to vote
10 for the member elected director position?

11 A. I will -- I will make one small addendum to
12 that and that is there have been a handful of young
13 students who had wanted to join, but have been unable to
14 join because they didn't have a credit card and they
15 contacted me directly and asked if they could join
16 without paying the \$10.00. That question went before
17 the board and we admitted them. So there are some
18 members now who can vote that actually haven't paid the
19 membership dues, but they were -- they were admitted as
20 members through that procedure.

21 Q. So you're saying that there was a formal board
22 action on particular members who sought eligibility to
23 become a member and vote without having paid the dues?

24 A. I think -- I think that's right. There were
25 only three kids that I remember from New York that --

1 that did this. And -- and I think the board -- the
2 board had approved them. We're -- we're very much
3 moderate by counsel during this board so I think it had
4 to be voted.

5 Q. Okay. So -- so far as you can recall the --
6 there were only three and those three that obtained
7 exemption on the \$10.00 were expressly approved by the
8 board?

9 A. I believe that's right.

10 Q. Okay. Mr. Blum would you look with me at
11 Section 4.02.

12 MR. MCCARTHY: Same document, counsel?

13 MR. POWERS: In the same document, yes.
14 It's just a little further down on the Page.

15 MR. MCCARTHY: Got it.

16 Q. Am I right that the -- give the circumstance
17 of five directors on the board of directors and only one
18 member elected director that the members do not have the
19 ability to elect or change a majority of SFFA's
20 governing body?

21 MR. MCCARTHY: Objection form.

22 THE WITNESS: Yes.

23 Q. (BY MR. POWERS) And as to 4.03 it provides all
24 directors must be general members of the Corporation.
25 Is it your understanding that that is the case or not?

1 actually done in the case of the current director, Eva
2 Ghao, you said an outside vendor was responsible for
3 disseminating the emails; is that right?

4 A. Yes.

5 Q. And I assume you received a copy of that as a
6 member?

7 A. Yes.

8 Q. And in the emails that are distributed to the
9 membership are -- are the email addresses of other
10 members visible in the -- kind of the top to line of the
11 email or in a CC line or not?

12 MR. MCCARTHY: Objection form.

13 THE WITNESS: They are not displayed.

14 Q. (BY MR. POWERS) Do the -- is there other
15 indication in the email document whereby the recipients
16 can see and identify who the other recipients of the
17 email were?

18 A. They are not able to identify the recipients.

19 Q. Is that by design or by happenstance?

20 A. Well, our membership rolls are private and the
21 vendor uses a service called Mail Chimp and the
22 membership organizations that I belong to use Mail Chimp
23 and send out notifications and updates and no other
24 fellow ever of these other organizations are ever
25 disclosed. So Student For Fair Admissions uses the same

1 -- the same kind of format.

2 Q. Are -- are members permitted access to a copy
3 of the membership roll?

4 A. No.

5 Q. Other than the happenstance of joining at the
6 same time or bumping into one another, what way would a
7 member other than -- than you have the opportunity to
8 learn the identities of the other members?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: There is no mechanism for
11 Students For Fair Admissions to share our membership
12 roll with our members or anyone outside of this
13 organization.

14 Q. (BY MR. POWERS) What -- what is the last time
15 Students For Fair Admissions has polled its members with
16 a policy question?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: Well, we have periodic
19 conference calls that all of our members are invited to
20 -- to participate. I think maybe the last one was a few
21 months a go and there was some, you know, some questions
22 by individual members about the state of -- of our
23 lawsuits and I -- I think that's the extent to which our
24 members can -- public way with other members present
25 discuss direction of the organization and ask questions

1 THE WITNESS: And my answer is, yes.

2 Q. (BY MR. POWERS) Now, Mr. Blum, you -- you said
3 these have been periodic, when is the last time before
4 that there had been a similar conference call?

5 MR. MCCARTHY: Objection form.

6 THE WITNESS: Typically about every 90 to
7 120 days. Some -- some years there are lots of
8 newsworthy things that are happening that -- try to get
9 together about three or four times a year. Other years
10 it's been relatively quiet -- not that much so maybe
11 only once or twice a year.

12 Q. (BY MR. POWERS) What -- what is the format for
13 the call?

14 A. An email is sent by our -- our vendor.
15 Alerting people a few days prior to the conference call.
16 When it's scheduled they're invited to join -- join in
17 by calling a number. They are reminded I think the day
18 before there's gonna be a conference call and the
19 designated hour -- counsel conducts the meeting on --
20 typically give a short update and then open it up for Q
21 and A discussion.

22 Q. And so are you -- are you a primary speaker or
23 is it primarily counsel?

24 A. I'm the primary speaker.

25 Q. And do others speak at the meeting in terms of

1 the initial presentation?

2 MR. MCCARTHY: Objection. First
3 Amendment and associational privilege. I just want to
4 caution the witness not to disclose any communications
5 that might have taken place on one of the periodic
6 membership calls that are currently under discussion
7 now.

8 THE WITNESS: I primarily make a
9 presentation. If there is a question that is legally
10 complex then I will ask counsel to help answer that
11 question.

12 Q. (BY MR. POWERS) These calls are typically less
13 than an hour?

14 A. Yeah, less than an hour. I'd say that's
15 right.

16 Q. And the -- am I right that you've -- you've
17 kind of mentioned just a -- a generalized presentation
18 about an update followed by an inquiry, does anybody
19 have any questions about that. Is that kind of the
20 general substance of how that precedes?

21 MR. MCCARTHY: Objection form.
22 Objection. First Amendment associational privilege and
23 I just want to caution the witness not to disclose any
24 contents of communications. But if you can abide that
25 instruction you may answer the question.

1 THE WITNESS: Yes.

2 Q. (BY MR. POWERS) Would it be fair to say that
3 SFFA has not engaged in an effort to poll its members to
4 determine which policy issues or which types of actions
5 SFFA should be pursuing?

6 MR. MCCARTHY: Objection form.

7 THE WITNESS: We have not formatively
8 polled our members (audio indiscernible) what you have
9 just described.

10 MR. POWERS: Can you say that one more
11 time 'cause you broke up a little.

12 THE WITNESS: Yeah, I'm sorry. Yes,
13 Students For Fair Admissions has never polled in a
14 informal way our members on various endeavors that they
15 believe we should undertake. I will state that I am in
16 constant communication with the membership through phone
17 and email and receive dozens of -- of suggestions and
18 ideas in any given month on a one-to-one basis.

19 Q. (BY MR. POWERS) There's been no effort to
20 survey the -- to survey the 20,000 plus individuals that
21 you count as members to get feedback is that right?

22 MR. MCCARTHY: And again, I want to make
23 the same objection on the First Amendment and
24 associational privilege grounds and caution the witness
25 not to disclose the contents of any communications with

1 answer the question without making any such disclosure
2 you may answer the question.

3 THE WITNESS: I have never received a
4 petition from a group of members encouraging the
5 organization to (audio indiscernible) any kind of
6 direction.

7 Q. (BY MR. POWERS) And it's --

8 REPORTER: I'm sorry. I -- I didn't get
9 that last part, Mr. Blum.

10 THE WITNESS: Yes. I -- I have never
11 received a petition from a group of members encouraging
12 us to move the organization in a specific direction.

13 Q. (BY MR. POWERS) And in fact, is there any
14 practical way that the members of SFFA could assemble a
15 petition to distribute to SFFA?

16 MR. MCCARTHY: Objection form.

17 THE WITNESS: As individuals they can and
18 often do petition or encourage SFFA to undertake certain
19 endeavors.

20 Q. (BY MR. POWERS) Your -- am I right that there
21 is no practical way for a substantial number of members
22 to assemble together and coordinate on a request to SFFA
23 for any particular action or initiative?

24 MR. MCCARTHY: Objection form.

25 THE WITNESS: Because our membership is

1 not disclosed to our fellow members, no member knows the
2 identity of another member unless they have volunteered
3 that information to one another. The only way that an
4 individual can make suggestions about the direction or
5 activities of SFFA is to contact or go to me directly.

6 Q. (BY MR. POWERS) Have you ever taken steps to
7 form a committee of members within SFFA?

8 A. No.

9 Q. Are there any committees in SFFA other than
10 the board?

11 A. No.

12 MR. MCCARTHY: I'm just -- sorry to
13 interrupt, but we've been going I think, for over an
14 hour here.

15 MR. POWERS: Oh, you're right.

16 MR. MCCARTHY: Might be a decent time to
17 take a break and if you I don't mean to break you up,
18 but if you're in a decent stopping point, might be a
19 good time.

20 MR. POWERS: We can stop right now.

21 MR. MCCARTHY: Okay.

22 REPORTER: The time is 9:57 a.m. and we
23 are off the record.

24 (Break.)

25 REPORTER: The time is 10:13 a.m. and we

1 THE WITNESS: Mr. Powers, I'm unable to
2 answer the question.

3 Q. (BY MR. POWERS) Mr. Blum the -- do you recall
4 or have available to you now the number of votes that
5 were cast in that election?

6 MR. MCCARTHY: Objection. First
7 Amendment and associational privilege grounds and I'll
8 instruct the witness not to answer the question.

9 Q. (BY MR. POWERS) My initial question is simply,
10 do you actually know the number either with precision or
11 by approximation, not -- I'm not asking you to tell me
12 the number, but do you know the number?

13 MR. MCCARTHY: You can answer a yes or no
14 question.

15 THE WITNESS: Yeah, approximately.

16 Q. (BY MR. POWERS) Okay. Will you tell me the
17 number of votes that were cast in the election of Eva
18 Ghao?

19 MR. MCCARTHY: I'm maintain the objection
20 and instruct the witness not to answer.

21 Q. (BY MR. POWERS) Will you -- can -- can you
22 answer yes or no, did as many as ten percent of the
23 membership of SFFA participate in the election?

24 MR. MCCARTHY: Same objection and I'll
25 instruct the witness not to answer the question.

1 MR. POWERS: Tom, is there any bracket
2 you will permit me to ask or you drawing the line at --
3 at any information beyond whether he knows it?

4 MR. MCCARTHY: I will -- I'll tell you
5 this: For now I'm gonna draw the line at any
6 information on whether he knows it. I'll think about it
7 over the lunch break to see if there's a way we can get
8 you some bracket. I'm -- I'm not promising that I'll
9 give you one, but I'll -- willing to consider it and
10 think it through further over the break.

11 MR. POWERS: Thank you. I appreciate it.

12 MR. MCCARTHY: Sure.

13 MR. POWERS: Mr. Blum I'm -- I'm putting
14 into the chat box what I've marked as deposition
15 Exhibit 27. Tom, for your benefit the -- the numbering
16 that I've used so far -- well frankly, David and Carter
17 as well. The numbering I've used so far tracks the same
18 numbering we used at the last deposition with Mr. Blum
19 and so I'm skipping substantially here because I want to
20 maintain the same numbering throughout.

21 (Exhibit 27, marked.)

22 MR. MCCARTHY: Makes sense, thanks.

23 MR. POWERS: Mr. Blum are you able to
24 open Exhibit 27?

25 THE WITNESS: Is this this Form 990 from

1 MR. HINOJOSA: You're gonna have to do
2 the clapper.

3 Q. (BY MR. POWERS) So what, Mr. Blum, will those
4 members that we just discussed who are not seeking any
5 admission to a college or university obtain if SFFA were
6 successful in this lawsuit?

7 MR. MCCARTHY: Objection form.

8 THE WITNESS: Those members would have
9 the benefit of knowing that they participated in
10 litigation that furthered our joint understanding of --
11 of, you know, fair and legal college admissions.

12 Q. (BY MR. POWERS) Essentially they would achieve
13 a policy preference?

14 MR. MCCARTHY: Objection form.

15 THE WITNESS: Yes they will have
16 participated in a lawsuit in which the -- the admission
17 and advocacy of this organization had been realized.

18 Q. (BY MR. POWERS) At least as to -- to that
19 group of members that we've talked to -- talked about
20 that have no current anticipation of seeking admission
21 at any college or university, much less the University
22 of Texas. There -- there will be no benefit other than
23 the realization of a preference for what policy will be
24 on this issue?

25 MR. MCCARTHY: Objection form.

1 Q. Do you recall this is a brief that SFFA filed
2 in the first lawsuit that it filed against the
3 defendants?

4 A. I -- I have not reviewed this document in a
5 few years, but it -- it looks like the following that
6 counsel made.

7 Q. Would you look with me at Page 13?

8 A. Sure.

9 Q. Okay. And the paragraph at the top of the
10 page contains a description of SFFA's views on its
11 members for financial support of the organization. Do
12 you see that?

13 MR. MCCARTHY: Counsel, just to make sure
14 we're on the same page, is the first word on this page,
15 seventh in italics.

16 MR. POWERS: Yes.

17 MR. MCCARTHY: Okay. Thanks. Are -- is
18 that where you are Mr. Blum?

19 THE WITNESS: I see it. Let me -- let me
20 read the paragraph. Okay. I finished reading the
21 paragraph.

22 Q. And SSFA made the claim in this filing from
23 three years ago that more than 1,000 of its members had
24 contributed financially to SFFA, correct?

25 A. Correct.

1 Q. And if it were 1,000 or only a small -- none
2 more than that that would correspond to less than five
3 percent of the people it counts as members of SFFA; is
4 that true?

5 MR. MCCARTHY: Objection form.

6 THE WITNESS: That seems to be about the
7 right percentage.

8 Q. (BY MR. POWERS) And of the people that SFFA
9 counts as members I want to talk about a slightly
10 different group. Those individuals who have either been
11 denied admission to a college or a university for
12 reasons that they correlate to a race-conscious
13 admissions program or those that are -- who are then
14 seeking admission to a college or university. Do you
15 get the group that I'm talking about?

16 A. I -- I don't. Perhaps you could just
17 disassemble it for me.

18 Q. Sure. So two -- two separate groups. One,
19 students who are seeking admission to college or
20 university, are -- are you with me on the first group?

21 A. And -- and Mr. Powers, that group of students
22 are you -- are you inquiring about -- are they our
23 members or what -- what characteristics other than that
24 are you ascribing to this -- to this group or seeking --
25 seeking admissions?

1 in your mind are the obvious reasons that SFFA had for
2 choosing to organize itself in a way so as to not have
3 members within the meaning of Virginia state law?

4 MR. MCCARTHY: Objection form and
5 objection attorney-client privilege. I caution the
6 witness not to disclose communications with counsel.

7 THE WITNESS: The answer is, I don't
8 know.

9 Q. (BY MR. POWERS) I want to turn now to another
10 topic. Am I correct that it was you who identified the
11 Wiley Rein firm as counsel or as the set of lawyers that
12 should serve as counsel for the Fisher lawsuit?

13 MR. MCCARTHY: Objection form.

14 THE WITNESS: I recommended Wiley Rein to
15 Abby and her father.

16 Q. (BY MR. POWERS) Now, to be clear you actually
17 identified Wiley Rein as -- as your expected or
18 preferred counsel before you had even identified Ms.
19 Fisher as the plaintiff, correct?

20 MR. MCCARTHY: Objection form.

21 THE WITNESS: I spoke to a number of
22 lawyers and number of different law firms about this
23 case -- about the idea of bringing a lawsuit against the
24 University of Texas. My roots at Wiley Rein -- were
25 deep and they expressed the most, you know, interest in

1 representing a future plaintiff.

2 Q. (BY MR. POWERS) And so are you indicating that
3 you had identified other candidates as possible
4 litigation counsel once you had a plaintiff selected for
5 the suit?

6 MR. MCCARTHY: Objection form and
7 objection attorney-client privilege. I think the
8 question is probably fine, but I just want to caution
9 the witness not to disclose any communications with
10 counsel.

11 THE WITNESS: I talked to a number of
12 different lawyers about -- about this, you know -- I
13 challenged the universities reintroduction of race back
14 in 2000 and I guess it was five.

15 Q. (BY MR. POWERS) 2005, you said?

16 A. 2005. I think that's the year that UT
17 implemented race base criteria once again.

18 Q. I think you described before that -- that you
19 spent about three years looking for a plaintiff who --
20 who could be the face of your challenge to UT's
21 admission policy?

22 MR. MCCARTHY: Objection form.

23 THE WITNESS: It may have been close to
24 three years, that's right.

25 Q. (BY MR. POWERS) And so during that period you

1 talked with a number of different counsel about the
2 possibilities for her going forward with this suit and
3 before you had identified the plaintiff?

4 MR. MCCARTHY: Objection form. And
5 again, I just caution the witness not to disclose
6 communications with counsel.

7 THE WITNESS: The answer to your
8 question, Mr. Powers, is yes.

9 Q. (BY MR. POWERS) And it was you who identified
10 the University of Texas as the target defendant for that
11 lawsuit, correct?

12 MR. MCCARTHY: Objection form.

13 THE WITNESS: Yes.

14 Q. (BY MR. POWERS) And you ultimately were the
15 one, both to find and approve that she was the right
16 person with respect to Abby Fisher?

17 MR. MCCARTHY: Objection form and I'm
18 gonna object again on attorney-client privilege and just
19 caution the witness not to disclose any communications
20 with counsel.

21 THE WITNESS: The -- the ultimate
22 decision to move forward with the litigation was made by
23 Abby and her family. But the counsel that Abby selected
24 was based upon my recommendation and my experience with
25 Wiley Rein.

1 Q. (BY MR. POWERS) And -- and in fact, you
2 actually regarded yourself and were regarded by Ms.
3 Fisher as her representative in connection with that
4 litigation?

5 MR. MCCARTHY: Objection form.

6 THE WITNESS: Well, I think the -- I'm
7 close to the Fisher family. I'm a family friend so
8 representative may not be the -- the term that I would
9 agree with it or they would agree with, but I was a
10 family friend and consequently they could call me night
11 or day. So I was a -- I was a conduit, if you will, on
12 -- a source -- a source of information -- limited
13 information that Abby and her mother and father could --
14 could call and -- and discuss.

15 Q. (BY MR. POWERS) There were calls with counsel
16 that you participated in throughout the lawsuit?

17 MR. MCCARTHY: Objection.

18 THE WITNESS: Yes.

19 Q. (BY MR. POWERS) And in fact, you had outlined
20 the lawsuit before Ms. Fisher had ever been identified
21 as the plaintiff for the lawsuit?

22 MR. MCCARTHY: I'm sorry, counsel. You
23 broke up a little bit.

24 THE WITNESS: You -- you were breaking up
25 a little bit.

1 MR. POWERS: I'll -- I'll All repeat it.

2 Q. (BY MR. POWERS) You had outlined the lawsuit
3 before you had ever even identified Abby Fisher as the
4 plaintiff for the lawsuit, correct?

5 MR. MCCARTHY: Objection form.

6 THE WITNESS: Yes.

7 Q. (BY MR. POWERS) And the -- am I right that
8 that work was your responsibility for the -- for the
9 Project on Fair Representation?

10 MR. MCCARTHY: Objection form.

11 THE WITNESS: You -- you broke up a
12 little bit again, Mr. Powers, if you would just say that
13 one more time.

14 Q. (BY MR. POWERS) Am I right that that work you
15 did related to the lawsuit was through your
16 responsibility for the Project on Fair Representation?

17 MR. MCCARTHY: Objection form.

18 THE WITNESS: Yes.

19 Q. (BY MR. POWERS) And -- and who was it that was
20 responsible for overseeing funding for the Fisher
21 lawsuit?

22 MR. MCCARTHY: Objection form.

23 THE WITNESS: I was.

24 Q. (BY MR. POWERS) And then at some point during
25 the Fisher litigation lawyers from Wiley Rein with whom

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Students For Fair)	
Admissions, INC.,)	
)	
)	
Plaintiff,)	
)	CIVIL ACTION
VS.)	
)	NO: 1:20-cv-00763-RP
UNIVERSITY OF TEXAS AT)	
AUSTIN, ET AL.,)	
)	
Defendants.)	

REPORTER'S CERTIFICATE
OF EDWARD BLUM

I, Miah Hoffman, CSR, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the foregoing deposition of Witness, Edward Blum, the Witness, hereinbefore named was at the time named, taken by me in oral stenograph on February 26, 2021, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction. The charge for the completed deposition is \$ _____ due from Defendant;

() That pursuant to the Federal Rules of

1 Civil procedure, the Witness shall have 30 days after
2 being notified by certified mail, return receipt
3 requested, by the deposition officer that the original
4 deposition transcript is available in her office for
5 review and signature by the Witness and if any
6 corrections made are attached hereto;

7 () That by agreement of counsel, a reading
8 condensed copy of the deposition transcript along with
9 the full-sized original Changes and Signature Sheet has
10 been sent to _____ on _____ for review
11 and signature within 30 days and if any corrections
12 returned are attached hereto;

13 () That by agreement of counsel, the
14 deposition officer is instructed to release the original
15 deposition transcript to
16 _____ on _____ for review and
17 signature, and the deposition officer is thereafter
18 released of any further responsibility with regard to
19 the original;

20 () That the witness shall have thirty (30)
21 days for review and signature of the original transcript
22 and if any corrections returned are attached hereto;

23 () That the signed transcript () was () was
24 not received from the Witness within 30 days;

25 () That the examination and signature of the

1 Witness is waived by the Witness and the parties;

2 That the amount of time used by each party at
3 the deposition is as follows:

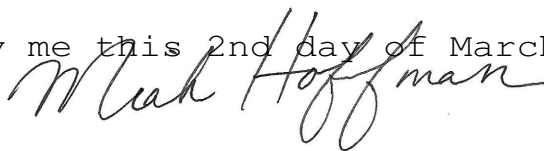
4 Mr. Powers: 03 HOURS:31 MINUTE(S)

5 Mr. Hinojosa: 01 HOURS:24 MINUTE(S)

6 Mr. McCarthy: 00 HOURS:00 MINUTE(S)

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in this action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Certified to by me this 2nd day of March, 2021.



13
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